

2015 Year in Review: New Zealand and International Human Rights Law

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I. Introduction

2015 witnessed New Zealand's continued engagement with the United Nations and its treaty and Charter based bodies for the protection of human rights. As regards its periodic reports to U.N. treaty based bodies it proved a busy year; New Zealand submitted its Sixth Periodic Report under the International Covenant on Civil and Politics Rights and its Fifth Periodic Report under the Convention on the Rights of the Child. Furthermore, the Committee against Torture offered its Concluding Observations on New Zealand's Sixth Periodic Report regarding the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; while New Zealand responded to the Committee on the Rights of Persons with Disabilities' Concluding Observations on its initial report regarding the Convention on the Rights of Persons with Disabilities. In addition, 2015 saw New Zealand as the subject of a number of decisions issued by the Human Rights Committee of the International Covenant on Civil and Political while the Human Rights Council through the Working Group on Arbitrary Detention released its report on the issue of arbitrary detention in New Zealand. Finally, at the domestic level the New Zealand Human Rights Commission continued its activities in relation to the promotion of international human rights law in New Zealand.

II. New Zealand and Human Rights Treaty Bodies

A. Sixth Periodic Report under the International Covenant on Civil and Politics Rights [ICCPR]

In May 2015, New Zealand submitted its Sixth Periodic Report under the International Covenant on Civil and Politics Rights [ICCPR]¹ to the Human Rights Committee [HRC], the body charged with overseeing the implementation of the Covenant. The report covers the period of January 2008 through March 2015. Prior to lodging the report with the United Nations [U.N.], in December 2014 a draft of the report was circulated for public comment which resulted in the receipt of twenty submissions from various non-governmental organizations [NGOs] that were considered in the preparation of the final report.² The final report responds in sequential order to the HRC's list of twenty-seven issues that was prepared in advance of the report in April 2014³ and is organized thematically including such subjects as: counter-terrorism, equality and non-discrimination, right to life and the protection of the rights of children amongst others.

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¹ Human Rights Committee, *Consideration of Reports submitted by States parties under Article 40 of the Covenant pursuant to the Optional Reporting Procedure. Sixth Periodic Report of States parties due in 2015: New Zealand*, U.N. Doc. CCPR/C/NZL/6 (2015) [hereinafter Sixth Periodic Report ICCPR].

² *ibid* para. 6.

³ See Human Rights Committee, *List of Issues Prior to submission of the Sixth Periodic Report of New Zealand*, U.N. Doc. CCPR/C/NZL/QPR/6 (2014).

Taken from across these themes, the report highlights the following as key developments since the last period report to the HRC in 2008 including:

- the introduction of the Marriage (Definition of Marriage) Amendment Act 2013 to allow marriages between people regardless of their sex, sexual orientation, or gender identity
- reforms to the Family Court process
- the establishment of cross-government initiatives to combat family violence
- the Independent Police Conduct Authority investigation into complaints about Police actions during Operation Eight
- the introduction of the Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014 to ensure fair standards for all fishing crews working in our waters
- the introduction of the Turning of the Tide: A Whānau Ora Crime and Crash Prevention Strategy which commits Police and Māori to work together to achieve common goals
- the development of the 2013 Youth Crime Action Plan to reduce youth reoffending rates, and
- new measures to protect children, including the enactment of Vulnerable Children Act 2014.⁴

This was not the only report that New Zealand submitted this year under U.N. treaty based mechanisms for the protection of human rights.

B. Fifth Periodic Report regarding the Convention on the Rights of the Child [CRC]

In December 2015, New Zealand also submitted its Fifth Periodic Report regarding the Convention on the Rights of the Child [CRC] to the body charged with overseeing its implementation: the Committee on the Rights of the Child [the Committee].⁵ The period covered in this report includes February 2011 through March 2015 and aims to update the Committee on New Zealand's progress against the 2011 Concluding Observations.⁶ It was prepared with attention to the extensive public consultation that took place between December 2014 and February 2015⁷ and notes that it should not be read in isolation but in conjunction with a number of other recent international reports prepared by New Zealand including the aforementioned Sixth Periodic Report under the ICCPR.⁸

It offers that New Zealand has made significant improvements in outcomes for children which can be viewed across a continuum of services including: universal and preventative services, early intervention, intensive support and statutory intervention.⁹ The Report attributes these successes to a number of initiatives such as a new method of working known as the Better Public Services [BPS] Results,¹⁰ the Children's Action Plan,¹¹ an initiative aimed at Maori communities known as Whānau

⁴ Sixth Periodic Report ICCPR, (n1) para 3.

⁵ Committee on the Rights of the Child, *Consideration of Reports submitted by States parties under Article 44 of the Convention. Fifth Periodic Report of States parties due in 2015: New Zealand*, U.N. Doc. CRC/C/NZL/5 (2015).

⁶ *ibid* para. 1.

⁷ *ibid* para. 3.

⁸ *ibid* para. 2.

⁹ *ibid* para. 5.

¹⁰ *ibid* para. 6.

Ora¹², Well Child/Tamariki Ora [WCTO]¹³ and the Youth Crime Action Plan¹⁴ which are highlighted through the report which proceeds thematically and with identification on an article by article basis. Yet, the government's report recognizes that broadly serious issues remain including that of tackling child abuse and child hardship particularly amongst Maori¹⁵ while specifically limited progress has been made in certain areas identified in the Committee's Concluding Observations including matters related to children unlawfully in New Zealand, the minimum age to admission of employment and age-mixing in detention facilities.¹⁶ The report notes that New Zealand will continue to maintain reservations related to these areas until its legislation and policy match the CRC's requirements. However, in the meantime New Zealand will continue to maintain policies and protections for children in these situations.¹⁷

C. Concluding Observations on the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment [CAT]

Pursuant to its commitment under the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [CAT], New Zealand submitted its Sixth Periodic Report to the Committee against Torture [Committee] in December 2013 with general distribution to the U.N. in March 2014.¹⁸ In response, in June 2015 the Committee released its *Concluding Observations on the Sixth Periodic Report of New Zealand*.¹⁹

The Committee begins by offering praise for legislative and administrative changes made in New Zealand of relevance to areas of the CAT including:

- Amendments to family court legislation, to enable resolutions to be made faster and in a more fluid manner;
- The introduction of police safety orders to protect women and their families when the police cannot arrest someone for family violence owing to insufficient evidence;
- The implementation of the Immigration Act 2009, which entered into force on 29 November 2010 and prohibits the expulsion of persons to a place where they are at risk of torture and limits the situations in which asylum seekers may be detained;
- The enactment of the Immigration Amendment Act 2013, which gives agencies the time needed to make enquiries into the backgrounds of groups of individuals, pending decisions on refugee or protection claims;

¹¹ *ibid* para. 7.

¹² *ibid* para. 8.

¹³ *ibid* para. 10.

¹⁴ *ibid* para. 11.

¹⁵ *ibid* para. 4.

¹⁶ *ibid* para. 13.

¹⁷ *ibid*.

¹⁸ Committee against Torture, *Consideration of Reports submitted by States Parties under Article 19 of the Convention pursuant to the Optional Reporting Procedure. Sixth Periodic Report of States parties due in 2013: New Zealand*, U.N. Doc. CAT/C/NZL/6 (2014).

¹⁹ Committee against Torture, *Concluding Observations on the Sixth Periodic Report of New Zealand*, U.N. Doc. CAT/C/NZL/CO/6 (2015).

- The enactment of the Victims of Crime Reform Bill, which aims to enhance victims' rights and role in criminal justice processes and improve the responses of government agencies to victims of crime;
- The enactment of the Vulnerable Children Act 2014 with new measures to protect children.²⁰

However, the Committee highlights twelve principle areas of concern and offers recommendations for follow-up in New Zealand's state response in May 2016. These areas include concern over the lack of CAT's full incorporation into domestic law²¹ which is closely related to both its specific concern that New Zealand has not withdrawn its reservation to Article 14 and as such leaves "at the discretion of the Attorney-General of New Zealand the right to award compensation to victims of torture, which is incompatible with the letter and spirit of the Convention, as well as with the State party's obligation to ensure the rights of victims of torture to fair and adequate compensation, including the means for as full a rehabilitation as possible";²² as well as related to the more general concern over redress for victims of torture including not awarding full redress and the restriction of circumstances in which courts are able to award redress.²³ Beyond matters related to implementation and redress, the Committee also noted concerns over: certain aspects of national preventative mechanisms primarily in relation to funding,²⁴ the actual independence of the Independent Police Conduct Authority in relation to their investigations,²⁵ the persistence of violence against women and especially the disproportionate occurrence against Maori women,²⁶ the trafficking in persons including children for both labor and sex,²⁷ the arrangements in relation to persons in custody and their treatment including overcrowding and inadequate health care services,²⁸ the disproportionate incarceration of Indigenous Peoples in New Zealand,²⁹ the excessive use of seclusion in mental health facilities and the failure of the state to investigate or hold any individual accountable for the nearly 200 allegations of torture and ill-treatment against minors at Lake Alice Hospital,³⁰ gaps in the protection of minors in the criminal justice system,³¹ the continued use of tasers in an inappropriate and excessive way by the police according to reports,³² the mandatory detention of "mass arrival groups" of asylum seekers under the Immigration Amendment Act 2013 and proposals in Parliament affecting non-refoulement.³³

²⁰ *ibid* para. 4.

²¹ *ibid* para. 8.

²² *ibid* para. 20.

²³ *ibid* para. 19.

²⁴ *ibid* para. 9.

²⁵ *ibid* para. 10.

²⁶ *ibid* para. 11.

²⁷ *ibid* para. 12.

²⁸ *ibid* para. 13.

²⁹ *ibid* para. 14.

³⁰ *ibid* para. 15.

³¹ *ibid* para. 16.

³² *ibid* para. 17.

³³ *ibid* para. 18.

D. New Zealand's Response to the Concluding Observations on the Convention on the Rights of Persons with Disabilities [CRPD]

In 2008 New Zealand ratified the Convention on the Rights of Persons with Disabilities [CRPD] and pursuant to Article 35 submitted its first periodic report to the Committee on the Rights of Persons with Disabilities [Committee] in October 2013.³⁴ The following October the Committee released its *Concluding Observations on the Initial Report of New Zealand*³⁵ regarding the CRPD and in July 2015 New Zealand responded to these observations.³⁶ The government's response is divided into seven categories across the thirty-three recommendations of the Committee including: general, access, justice and self-determination, community living, reasonable accommodation, data and international cooperation. At the outset of its response, the government notes that the majority of recommendations offered by the Committee currently are being addressed by the New Zealand Disability Strategy and the Disability Action Plan 2014-2018 which the Committee highly praised in its concluding observations. The New Zealand Disability Strategy and the Disability Action Plan 2014-2018 involve an approach to disability issues that emphasizes the participation of representatives of disabled people in the decision making process in keeping with the co-design ethos of the CRPD.

In most other areas, the government notes its agreement with the Committee that there is an issue but indicates that there is a requirement to complete policy and legislative processes before reaching a final decision on the recommendation; in most instances the policy and legislative process to be completed is that of the Disability Action Plan 2014 -2018. The bulk of these recommendations where the government has taken the approach of 'no final decision' arose in relation to issues concerning justice and self-determination including: legal aid,³⁷ the replacement of substituted decision making with that of supported decision making,³⁸ detention based on disability and against the will of an individual³⁹ and the issue of the use of seclusion and restraint in medical facilities.⁴⁰ Only in two instances did the government agree that there is an issue but rejected the Committee's recommendation and offered an alternative method to address the matter. First, the government rejected the Committee's recommendation that New Zealand review its criminal justice system,

to ensure that criminal procedure is followed in accordance with all the safeguards and guarantees that are applicable to non-disabled persons, and that deprivation of liberty should be applied as a matter of last resort and when other diversion programmes, including restorative justice, are insufficient to deter

³⁴ See Committee on the Rights of Persons with Disabilities, *Implementation of the Convention on the Rights of Persons with Disabilities, Initial Reports submitted by States parties under Article 35 of the Convention: New Zealand*, U.N. Doc.CRPD/C/NZL/1 (2013).

³⁵ See Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of New Zealand*, U.N. Doc.CRPD/C/NZL/CO/1 (2014).

³⁶ See Office for Disability Issues, Ministry of Social Development, *Government Response to the United Nations Committee on the Rights of Persons with Disabilities' Concluding Observations on New Zealand*, at <http://www.odl.govt.nz/what-we-do/un-convention/monitoring-implementation/2015/index.html> (04 June 2016).

³⁷ *ibid* para. 12.

³⁸ *ibid* para. 18.

³⁹ *ibid* para. 19.

⁴⁰ *ibid* para. 20.

future crime. The Committee also recommends that the State Party ensure that reasonable accommodation in prison settings operates in respect of persons with disabilities.⁴¹

Noting that while there is further work to be done in relation to this matter, the government rejected this specific recommendation without further articulation of its reasoning other than noting that Ministries of Health, Justice and the Department of Corrections work to ensure that the criminal justice system is responsive to those with disabilities. Second, the government did not agree with the Committee's recommendation regarding the understanding of the definition reasonable accommodation; for the government reasonable accommodation as provided for in the Human Rights Act 1993 is already consistent with Article 2 of the CRPD.⁴² Finally, it should be noted that it appears that there is only one complete rejection of the recommendations offered by the Committee and this comes in relation to the recommendation to prohibit the sterilization of people with disabilities absent free, prior and informed consent. Here, the government notes that in some situations sterilization may be required even where the individual is not capable of giving or communicating informed consent.⁴³

III. International Human Rights Law Jurisprudence: Cases Concerning New Zealand before the Human Rights Committee [HRC]

Aside from overseeing the implementation of the ICCPR, the First Optional Protocol to the Covenant gives the HRC the power to examine individual complaints concerning alleged violations of the ICCPR by states party to the Protocol. In 2015 the HRC offered three decisions on such communications from individuals concerning New Zealand.

A. *L.F. v. New Zealand*

In May 2015, the HRC issued its decision in the case of *L.F. v. New Zealand*.⁴⁴ Here the HRC considered the admissibility of the communication separate from the merits with the ultimate finding that the communication was inadmissible on the ground of non-substantiation. L.F., a national of New Zealand, alleged that his right to a fair trial as secured in Article 14 of the ICCPR was breached. In 2008, L.F. was found guilty of the possession of drugs for sale and sentenced to nineteen and a half years in prison.⁴⁵ During the trial, one of the ten jurors went missing for two days during the proceedings due to a misunderstanding on his part concerning the judge's instructions regarding a recess in the trial. L.F. did not know the reasons for the absence, there was no final ruling as to whether the juror was capable of discharging his duties after the absence and the trial judge allowed the hearing to continue. The author appealed his conviction on these grounds arguing that the trial never should have been allowed to proceed. The Court of Appeal rejected the author's argument noting that the trial judge had given reasons as to why the trial should continue with less than eleven jurors in accordance with section 374 of the Procedure Code and that the

⁴¹ *ibid* para. 21.

⁴² *ibid* para. 31.

⁴³ *ibid* para. 22.

⁴⁴ *L.F. v. New Zealand*, Communication No. 2211/2012, U.N. Doc. CCPR/C/113/D/2211/2012 (2015).

⁴⁵ *ibid* paras. 1.1 -2.1.

author did not raise this at the time of the trial. The Supreme Court examined the ground of appeal and concluded that the Court of Appeal had not erred in its judgment that there had been no miscarriage of justice.⁴⁶

In turn, L.F. now argued before the HRC that by failing to guarantee his trial was in conformity with New Zealand's criminal procedure as regards the number and the quality of jurors forming the jury that the state has violated his right to a fair trial under the ICCPR.⁴⁷ New Zealand argued that the author's communication was inadmissible on the grounds of non-exhaustion of domestic remedies, non-substantiation and incompatibility with the Covenant.⁴⁸ In particular, New Zealand argued that the entire communication was inadmissible on the grounds of non-substantiation in that both the Court of Appeal and the Supreme Court made their decisions based on the assessment that the author at the first instance trial did not object to the way in which the matter was dealt with and there was no request on his part to make further inquiries into the circumstance concerning the absence of the juror.⁴⁹ L.F. responded that he was not properly informed regarding the decisions affecting him during the first instance trial and therefore impinged on his ability to make effective appeals throughout the proceedings thus violating his Article 14 right to a fair trial.⁵⁰

Ultimately, the HRC found the communication inadmissible on the grounds of non-substantiation; the author failed to provide proof of his claim to a violation of a right to a fair trial. This decision rested on the fact that the defense counsel was privately retained and therefore his alleged failure to properly represent the author during the trial at first instance cannot be attributed to the state. Further, the HRC noted that in its jurisprudence it stresses that it is the responsibility of the state to evaluate the facts and evidence of a case or the application of domestic legislation unless it is demonstrates that such an evaluation or application was arbitrary or amounted to a manifest error or denial of justice. Here, the HRC examined the materials submitted by the author in relation to the proceedings and found that such information does not provide sufficient evidence to warrant the conclusion that the proceedings suffered from such defects.⁵¹

B. *Taito Fa'afete v. New Zealand*

Next, in September 2015 the HRC issued its decision in the case of *Taito Fa'afete v. New Zealand* and ultimately found no violation on the merits.⁵² The author of the communication, Taito Fa'afete, is a New Zealander national of Samoan origin who claimed that his rights under Articles 2 (3); 9 (1) and (3); 14 (1), (2), (3) (b)-(e) and (g), (5) and (6); 17 and 26 of the ICCPR were violated by New Zealand in the context of criminal proceedings initiated against him for a robbery in which he denies participation.⁵³ In July 1994, the author was arrested by the police while driving a getaway car for

⁴⁶ *ibid* paras. 2.2- 2.6.

⁴⁷ *ibid* para. 3.

⁴⁸ *ibid* para. 4.1.

⁴⁹ *ibid* para. 6.3.

⁵⁰ *ibid*.

⁵¹ *ibid* para. 6.4.

⁵² *Taito Fa'afete v. New Zealand*, Communication No. 1909/2009, U.N. Doc. CCPR/C/114/D/1909/2009 (2015).

⁵³ *ibid* para. 1.

the two main offenders thirty minutes after the robbery though the cash that had been robbed was no longer in the car.⁵⁴ Subsequently, in December 1995 the High Court found the author guilty and he was sentenced to seven years imprisonment.⁵⁵

Collectively, these articles that the author alleged were violated pertain to the miscarriage of justice, discrimination and due process. He argued that these occurred at various stages throughout the proceedings and include matters related to: the selection of the jury,⁵⁶ the right to defense and inability to examine the witness,⁵⁷ the presumption of innocence and judicial bias,⁵⁸ the right to review sentence and conviction by a higher tribunal,⁵⁹ delays in proceedings⁶⁰ and the right to an effective remedy.⁶¹ With regards to these allegations, the HRC only found that claims based on Article 14 (1), (3) (b), (c) and (e), and (5) of the Covenant relating to the issue of defense and right to examine witnesses, to the issue of delay and to the issue of the access to the documentation necessary for the preparation of an appeal were sufficiently substantiated and ripe for consideration on the merits;⁶² while the remainder were inadmissible on the grounds of non-substantiation, and *ratione materiae*.⁶³

Ultimately, the HRC found that there was no breach of any provision of the ICCPR.⁶⁴ Regarding the matter of defense and the right to examine witnesses, the HRC noted that although the state party must provide effective legal aid representation it is not for the HRC to determine how this should have been ensured unless there is an apparent miscarriage of justice and the information presented here does not allow the conclusion that the trial lawyer's conduct was contrary to the interests of justice to suffice for a violation under the ICCPR.⁶⁵ Regarding the issue of delay, the HRC noted that "the reasonableness of the delay in a trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities."⁶⁶ Here, the HRC noted that the delays were the result of the author; the delays before his appeal were the result of his own requests for three extensions while the delay before the Privy Council stemmed from the fact that the author waited more than three years before presenting his application for leave to appeal to the Privy Council together with 11 appellants.⁶⁷ Finally, regarding the matter of the access to documentation necessary for the preparation of an appeal, the HRC highlighted that the only documentation that the author has demonstrated was not available to him throughout the

⁵⁴ *ibid* para. 2.1.

⁵⁵ *ibid* para. 2.3.

⁵⁶ *ibid* paras. 3.2.- 3.3.

⁵⁷ *ibid* paras. 3.4- 3.5.

⁵⁸ *ibid* paras. 3.6- 3.7.

⁵⁹ *ibid* paras. 3.8- 3.10.

⁶⁰ *ibid* paras. 3.11- 3.12.

⁶¹ *ibid* para. 3.13.

⁶² *ibid* para. 6.9.

⁶³ *ibid* paras. 6.1- 6.7.

⁶⁴ *ibid* para. 8.

⁶⁵ *ibid* para. 7.2.

⁶⁶ *ibid* para. 7.3.

⁶⁷ *ibid* para. 7.3.

whole process was the summing up by the trial judge and that the author did not provide any information to explain in what respect that the summing up was necessary for him to effectively exercise his right to appeal or that it affected his right to a fair hearing as protected under the ICCPR. Therefore the HRC found that the author did not substantiate his claim and so cannot find a violation of the Covenant.⁶⁸

C. J.G. v. New Zealand

Finally, in December 2015 the HRC found the author's communication in *J.G. v. New Zealand*⁶⁹ inadmissible. In the communication, the author alleged his right to not be subject to double jeopardy as provided for in Article 14(7) of the ICCPR had been violated. J.G. was a national of China who moved to New Zealand in 2002 and was granted residency in 2006. On the same day that J.G. was granted residency he was arrested and charged with importing and possession of drugs. In February 2009 he was found guilty, convicted and sentenced and his December 2009 appeal was unsuccessful. In the interim, in June 2009 J.G. was served with a deportation order that specified his February 2009 conviction as the reason for the order. The Immigration Protection Tribunal dismissed his appeal against the deportation order and the High Court, the Court of Appeal and the Supreme Court of New Zealand all dismissed his applications for a judicial review and for leave to appeal.⁷⁰

On these grounds, the author asserted that New Zealand violated Article 14(7) which prohibits states from trying someone for the same offense for which s/he has already been tried and sentenced. The author's argument rested on two prongs: that by issuing his deportation order based on his drug-related convictions he was the victim of double jeopardy and further that as the order did not refer to any factors other than his drug offenses that he has been subject to a further penalty albeit administrative for offenses for which he has already been convicted and sentenced in violation of double jeopardy.⁷¹

Ultimately, the HRC concluded that the communication was inadmissible *ratione materiae* on the grounds that the decision to proceed with the deportation of the author was administrative in nature and independent of his conviction and sentencing under criminal law. As such it cannot be considered as constituting an additional punishment for the author's criminal offense and therefore does not raise any issue under Article 14(7) as alleged by the author.⁷²

IV. Human Rights Council: Special Procedures on Arbitrary Detention

⁶⁸ *ibid* para. 7.4.

⁶⁹ *J.G. v. New Zealand*, Communication Co. 2631/2015, U.N. Doc. CCPR/C/115/D/2631/2015 (2015).

⁷⁰ *ibid* paras. 2.1- 2.5.

⁷¹ *ibid* para. 3.

⁷² *ibid* para. 4.4.

Under its special procedure powers,⁷³ the Human Rights Council [Council] organized a two week visit to New Zealand for the Working Group on Arbitrary Detention [WGAD] during March- April 2014. Subsequently, in July 2015 the Council issued the *Report of the Working Group on Arbitrary Detention: Mission to New Zealand*.⁷⁴ Overall, the report notes that New Zealand's legal framework for ensuring that individuals are not subject to an arbitrary deprivation of liberty is well developed and consistent with international human rights law. The New Zealand Bill of Human Rights Act 1990 guarantees the right not to be arbitrarily arrested or detained and where an individual is arrested and detained it provides in detail his/her rights which are in conformity with Article 9 of the ICCPR. Specifically, the report notes with praise the legal requirement that arrested persons are informed of the grounds for their arrest and their legal rights, the right to habeas corpus to initiate proceedings to challenge the lawfulness of their detention and in case of unlawful detention the right of victims to claim and obtain compensation.

However, the report highlights a number of issues including matters related to preventative detention, Maoris, refugees and mental illness. Regarding preventative detention, the report concentrates on preventative detention in the form of an indeterminate-length jail sentence for individuals who pose a significant and ongoing risk to the public. Considered a last resort for violent offenders and sex offenders, the WGAD notes that such detention must be justified by compelling reasons, be subject to regular review by an independent body and be aimed at the rehabilitation and reintegration of the detainee into society. At the time of report, 280 inmates in New Zealand were serving a preventative sentence.⁷⁵ Further, the report noted with concern the high rate of incarceration of individuals of Maori descent in relation to the rest of the population; highlighting that such individuals comprise 51.4 percent of the prison population and sixty-five percent of the female prison population while Maori only comprise approximately fifteen percent of the general population.⁷⁶ As regards refugees, the WGAD observed that New Zealand does not have a mandatory detention policy for refugees and political asylum seekers and makes an effort to facilitate the integration of such persons. However, the report notes that the regime for persons who have requested protection status is more difficult than the regime for persons who already have obtained refugee status.⁷⁷ Finally, the report highlights a number of concerns in relation to the detention of the mentally ill including that the law is unclear in relation to the criteria for determining the risk of harm to self or other, that persons undergoing compulsory assessment and treatment are often unrepresented as they lack the financial means to secure legal advice and legal aid specifically for individuals with disabilities is limited; collectively leading to an overall concern on the part of the

⁷³ United Nations Human Rights Office of the High Commissioner, Special Procedures of the Human Rights Council, at <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> (30 May 2016).

⁷⁴ Human Rights Council, *Report of the Working Group on Arbitrary Detention: Mission to New Zealand, Addendum, New Zealand*, U.N. Doc. A/HRC/30/36/Add.2 (2015).

⁷⁵ *ibid* Summary.

⁷⁶ *ibid*.

⁷⁷ *ibid*.

WGAD that there may be an underestimated number of cases of arbitrary detention of individuals with mental illness.⁷⁸

V. Human Rights in the Domestic Context: The Activities of The New Zealand Human Rights Commission

Deriving its statutory mandate from the Human Rights Act [HRA], the New Zealand Human Rights Commission [Commission] is New Zealand's National Human Rights Institution [NHRI]. It is accredited as an "A" status NHRI and as such is able to offer information to the Human Rights Council. It continued its numerous activities this year for the promotion and protection of human rights in New Zealand.

A. The New Zealand Human Rights Commission Annual Report 2015

In October 2015, the Commission released the *New Zealand Human Rights Commission Annual Report* [Annual Report].⁷⁹ It notes that the Commission underwent a complete restructuring during the past financial year yet still continued to perform well⁸⁰ advocating respect for human rights across a range of areas including: race relations, counter-terrorism, surveillance and other political and civil rights concerns and the human right to participation, property, adequate housing and health in the Canterbury Earthquake Recovery.⁸¹ In particular, the Commission continued its work coordinating the Independent Monitoring Mechanism for the Convention on the Rights of Persons with Disabilities,⁸² its work on the U.N. Declaration on the Rights of Indigenous Peoples and its work in relation to the Convention Against Torture [CAT]; attending the sixth review by the Committee against Torture of New Zealand's performance of its obligations under the CAT.⁸³ Interestingly, this year also saw the Commission call on the government to increase New Zealand's refugee quota for the first time in twenty-seven years in light of the unprecedented number of displaced people in the world.⁸⁴ Other issues that the Commission noted that it continued to face this year were in relation to the full realization of the rights of gay, lesbian, bisexual, transsexual and intersex New Zealanders as well as violence and abuse in communities, particularly domestic and sexual violence and bullying in schools.⁸⁵ Finally, a theme stressed throughout the Annual Report is that of the Commission's commitment to online resources and the use of data visualization to make these resources more accessible with the aim of building an "evidence based, comprehensive picture of human rights progress that's accessible and easy to understand."⁸⁶

⁷⁸ *ibid.*

⁷⁹ New Zealand Human Rights Commission, *New Zealand Human Rights Commission Annual Report* (HRC, Wellington, 2015) [hereinafter Annual Report].

⁸⁰ *ibid.* 7.

⁸¹ *ibid.* 6-7.

⁸² *ibid.* 6.

⁸³ *ibid.* 7.

⁸⁴ *ibid.* 6.

⁸⁵ *ibid.* 7.

⁸⁶ *ibid.* 6.

B. The New Zealand Human Rights Commission National Plan of Action 2015- 2019 [NPA]

The Annual Report also noted significant improvements in the way that human rights are monitored in New Zealand with the online publication of New Zealand Human Rights Commission's *National Plan of Action 2015- 2019* [NPA].⁸⁷ The NPA details the government's actions in relation to New Zealand's second Universal Periodic Review [UPR] and will be used as the basis of the mid-point UPR review.⁸⁸

Given the Commission's emphasis in its Annual Report on commitment to online resources and the use of data visualization to make these resources more accessible, the NPA is perhaps best accessed and understood online. Quick figures on the site indicate that there have been fifty-four submissions to the UPR by more than 250 civil society individuals and groups, 155 UPR Recommendations of which 121 were accepted by the government and ninety-seven government actions to address UPR recommendation.⁸⁹ The site allows exploration by category across: issues, population groups, government agencies and U.N. treaty bodies. The NPA focuses on eleven issues including: violence, abuse and neglect, harmonious relations, health, Canterbury earthquake recovery, international human rights framework, equality and non-discrimination in the criminal justice system, education, employment, Indigenous rights, democratic rights and freedoms and poverty. Clicking on any of these issue pulls up a fact sheet which places the issue in its current context, addresses other issues raised by civil society and lists government related actions and UPR recommendations in relation to the issue. The same format is essentially mirrored across the other categories of population groups, government agencies and U.N. treaty bodies allowing for ease of cross-referencing on any matter addressed in the NPA.

It is envisioned that the NPA will be a a useful tool for government agencies and civil society for reporting, monitoring and advocacy as well as for the general public to understand human rights in New Zealand. As the Commission noted in its Annual Report, the way the Commission has linked the publication of the NPA to the conclusion of the UPR cycle is a world first and has generated significant overseas interest as a new way to monitor government.⁹⁰

C. The New Zealand Human Rights Commission Report on the Convention against Torture [CAT]

Further to its attendance of the sixth review by the Committee against Torture of New Zealand's performance of its obligations under the CAT as indicated in its Annual Report,⁹¹ the Commission also issued its own report; *New Zealand's Sixth Periodic Report to the Committee against Torture: Submission*

⁸⁷ See New Zealand Human Rights Commission, *National Action Plan 2015- 2019*, at <http://npa.hrc.co.nz/#/> (06 June 2016).

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ Annual Report (n79) 6.

⁹¹ See *ibid* (n83).

of the New Zealand Human Rights Commission.⁹² The report addresses seven substantive issues including: domestic implementation of human rights obligations, violence, detention of asylum seekers, over-representation of Maori in the criminal justice system, children and young people, historic cases of abuse, mental health in places of detention and other issues of concern. It concludes with thirty recommendations across these issues addressed at both the Committee against Torture and the government of New Zealand. Many of these issues and recommendations in the Commission's report align with those offered in the aforementioned Committee against Torture's *Concluding Observations on the Sixth Periodic Report of New Zealand*⁹³ and the Human Rights Council's *Report of the Working Group on Arbitrary Detention: Mission to New Zealand*.⁹⁴ The Commission's recommendations amongst others include that: the government review all legislation relating to detainees to ensure that it complies with New Zealand's international obligations and to take the required steps to withdraw its reservation to Article 14 regarding the award of compensation to victims of torture,⁹⁵ the government develop in consultation with civil society an agreed definition of sexual and family violence,⁹⁶ the government ensures that asylum seekers who are detained in correctional facilities are separated from other prisoners and not subject to criminal standards of detention,⁹⁷ the government commit to addressing the overrepresentation of Maori in the criminal justice system with a focus on efforts to address the root causes which lead to disproportionate incarceration rates,⁹⁸ the government takes steps to develop a national strategy and set of actions to ensure the provision of mental health care in detention facilities as well as a cross-agency plan to improve capabilities in relation to the management of individuals with high and complex needs.⁹⁹

⁹² See New Zealand Human Rights Commission, *New Zealand's 6th Periodic Review under the Convention Against Torture: Submission of the New Zealand Human Rights Commission*, at <https://www.hrc.co.nz/your-rights/human-rights/our-work/periodic-review-convention-against-torture/> (03 June 2016).

⁹³ See *ibid.* (ns 19-33) [discussing the concluding observations].

⁹⁴ See *ibid.* (ns 74-78) [discussing the report].

⁹⁵ *ibid.* (n92) Appendix 1, paras. 2-3.

⁹⁶ *ibid.* para. 11.

⁹⁷ *ibid.* para. 17.

⁹⁸ *ibid.* para. 19.

⁹⁹ *ibid.* paras. 27-8.